

mining amount of damages, with both fees to be deposited into the Perishable Agricultural Commodities Act Fund, prior to repeal by Pub. L. 104-48, §8(c), Nov. 15, 1995, 109 Stat. 429. See subsec. (a)(2) of this section.

§ 499g. Reparation order

(a) Determination by Secretary of Agriculture of amount of damages; order for payment

If after a hearing on a complaint made by any person under section 499f of this title, or without hearing as provided in subsections (c) and (d) of section 499f of this title, or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified, the Secretary determines that the commission merchant, dealer, or broker has violated any provision of section 499b of this title, he shall, unless the offender has already made reparation to the person complaining, determine the amount of damage, if any, to which such person is entitled as a result of such violation and shall make an order directing the offender to pay to such person complaining such amount on or before the date fixed in the order. The Secretary shall order any commission merchant, dealer, or broker who is the losing party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with any such hearing. If, after the respondent has filed his answer to the complaint, it appears therein that the respondent has admitted liability for a portion of the amount claimed in the complaint as damages, the Secretary under such rules and regulations as he shall prescribe, unless the respondent has already made reparation to the person complaining, may issue an order directing the respondent to pay to the complainant the undisputed amount on or before the date fixed in the order, leaving the respondent's liability for the disputed amount for subsequent determination. The remaining disputed amount shall be determined in the same manner and under the same procedure as it would have been determined if no order had been issued by the Secretary with respect to the undisputed sum.

(b) Failure to comply with order of Secretary; suit to enforce liability; order as evidence; costs and fees

If any commission merchant, dealer, or broker does not pay the reparation award within the time specified in the Secretary's order, the complainant, or any person for whose benefit such order was made, may within three years of the date of the order file in the district court of the United States for the district in which he resides or in which is located the principal place of business of the commission merchant, dealer, or broker, or in any State court having general jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages and the order of the Secretary in the premises. The orders, writs, and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States. Such suit in the district court shall proceed in all respects like other civil suits for damages, except that the findings and orders of the Secretary shall be prima-facie evidence of the facts therein

stated, and the petitioner shall not be liable for costs in the district court, nor for costs at any subsequent state of the proceedings, unless they accrue upon his appeal. If the petitioner finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit.

(c) Appeal from reparation order; proceedings

Either party adversely affected by the entry of a reparation order by the Secretary may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which said hearing was held: *Provided*, That in cases handled without a hearing in accordance with subsections (c) and (d) of section 499f of this title or in which a hearing has been waived by agreement of the parties, appeal shall be to the district court of the United States for the district in which the party complained against is located. Such appeal shall be perfected by the filing with the clerk of said court a notice of appeal, together with a petition in duplicate which shall recite prior proceedings before the Secretary and shall state the grounds upon which the petitioner relies to defeat the right of the adverse party to recover the damages claimed, with proof of service thereof upon the adverse party. Such appeal shall not be effective unless within thirty days from and after the date of the reparation order the appellant also files with the clerk a bond in double the amount of the reparation awarded against the appellant conditioned upon the payment of the judgment entered by the court, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department of the United States. The clerk of court shall immediately forward a copy thereof to the Secretary of Agriculture, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima-facie evidence of the facts therein stated. Appellee shall not be liable for costs in said court and if appellee prevails he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs. Such petition and pleadings certified by the Secretary upon which decision was made by him shall upon filing in the district court constitute the pleadings upon which said trial de novo shall proceed subject to any amendment allowed in that court.

(d) Suspension of license for failure to obey reparation order or appeal

Unless the licensee against whom a reparation order has been issued shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with

such order that he has either taken an appeal as herein authorized or has made payment in full as required by such order his license shall be suspended automatically at the expiration of such five-day period until he shows to the satisfaction of the Secretary that he has paid the amount therein specified with interest thereon to date of payment: *Provided*, That if on appeal the appellee prevails or if the appeal is dismissed the automatic suspension of license shall become effective at the expiration of thirty days from the date of the judgment on the appeal, but if the judgment is stayed by a court of competent jurisdiction the suspension shall become effective ten days after the expiration of such stay, unless prior thereto the judgment of the court has been satisfied.

(June 10, 1930, ch. 436, §7, 46 Stat. 534; Apr. 13, 1934, ch. 120, §§11-13, 48 Stat. 587, 588; June 19, 1936, ch. 602, §3, 49 Stat. 1534; Aug. 20, 1937, ch. 719, §10, 50 Stat. 728; June 23, 1938, ch. 599, 52 Stat. 953; May 14, 1940, ch. 196, 54 Stat. 214; Pub. L. 87-725, §§9, 10, Oct. 1, 1962, 76 Stat. 675; Pub. L. 92-231, §2, Feb. 15, 1972, 86 Stat. 38; Pub. L. 102-237, title X, §1011(5), Dec. 13, 1991, 105 Stat. 1898.)

CODIFICATION

Section was formerly classified to section 557 of this title.

AMENDMENTS

1991—Subsecs. (a) to (c). Pub. L. 102-237 substituted periods for semicolons at end of subsecs. (a) to (c).

1972—Subsec. (a). Pub. L. 92-231 directed the Secretary to order commission merchants, dealers, or brokers who are the losing party to pay the prevailing party, as reparation or additional reparation, reasonable fees and expenses incurred in connection with hearings.

1962—Subsec. (c). Pub. L. 87-725, §9, limited time for filing the bond to within 30 days from and after the date of the reparation order, and required such bond to be in cash, negotiable securities having a market value of at least equivalent to the amount of bond prescribed or the undertaking of a surety company on the approved list of sureties issued by the Treasury Department.

Subsec. (d). Pub. L. 87-725, §10, lengthened period upon the expiration of which the license is suspended from ten to thirty days, and provided that if the judgment is stayed by a court of competent jurisdiction the suspension becomes effective ten days after the expiration of such stay.

1940—Subsec. (c). Act May 14, 1940, inserted proviso in first sentence.

1938—Subsec. (a). Act June 23, 1938, inserted last two sentences.

1937—Subsec. (a). Act Aug. 20, 1937, among other changes, inserted “or without hearing as provided in section 499f of this title, paragraphs (c) and (d), or upon failure of the party complained against to answer a complaint duly served within the time prescribed, or to appear at a hearing after being duly notified” after “section 499f”.

Subsec. (b). Act Aug. 20, 1937, among other changes, substituted “pay the reparation award” for “comply with an order for the payment of money”.

Subsec. (c). Act Aug. 20, 1937, inserted “together with a bond in double the amount of the reparation award conditioned upon the payment of the judgment entered by the court plus interest and costs, including a reasonable attorney’s fee for the appellee, if the appellee shall prevail” after “upon adverse party” and struck out proviso in first sentence and “by registered mail” after “adverse party”.

Subsec. (d). Act Aug. 20, 1937, inserted proviso.

1936—Subsec. (c). Act June 19, 1936, inserted proviso in first sentence and “by registered mail” after “adverse party”.

1934—Subsec. (b). Act Apr. 13, 1934, §11, inserted after first sentence “The orders, writs and processes of the district courts may in these cases run, be served, and be returnable anywhere in the United States.”

Subsecs. (c), (d). Act Apr. 13, 1934, §§12, 13, added subsecs. (c) and (d).

§ 499h. Grounds for suspension or revocation of license

(a) Authority of Secretary

Whenever (1) the Secretary determines, as provided in section 499f of this title, that any commission merchant, dealer, or broker has violated any of the provisions of section 499b of this title, or (2) any commission merchant, dealer, or broker has been found guilty in a Federal court of having violated section 499n(b) of this title, the Secretary may publish the facts and circumstances of such violation and/or, by order, suspend the license of such offender for a period not to exceed ninety days, except that, if the violation is flagrant or repeated, the Secretary may, by order, revoke the license of the offender.

(b) Unlawful employment of certain persons; restrictions; bond assuring compliance; approval of employment without bond; change in amount of bond; payment of increased amount; penalties

Except with the approval of the Secretary, no licensee shall employ any person, or any person who is or has been responsibly connected with any person—

(1) whose license has been revoked or is currently suspended by order of the Secretary;

(2) who has been found after notice and opportunity for hearing to have committed any flagrant or repeated violation of section 499b of this title, but this provision shall not apply to any case in which the license of the person found to have committed such violation was suspended and the suspension period has expired or is not in effect; or

(3) against whom there is an unpaid reparation award issued within two years, subject to his right of appeal under section 499g(c) of this title.

The Secretary may approve such employment at any time following nonpayment of a reparation award, or after one year following the revocation or finding of flagrant or repeated violation of section 499b of this title, if the licensee furnishes and maintains a surety bond in form and amount satisfactory to the Secretary as assurance that such licensee’s business will be conducted in accordance with this chapter and that the licensee will pay all reparation awards, subject to its right of appeal under section 499g(c) of this title, which may be issued against it in connection with transactions occurring within four years following the approval. The Secretary may approve employment without a surety bond after the expiration of two years from the effective date of the applicable disciplinary order. The Secretary, based on changes in the nature and volume of business conducted by the licensee, may require an increase or authorize a